

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

YOEL ABRAHAM,

Defendant.

20-CR-411 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

The Court has reviewed the parties' various submissions in this matter, but still needs additional information prior to sentencing. Defendant's sentencing scheduled for June 20, 2024 is thus hereby adjourned to July 23, 2024 at 11:00 a.m. No later than July 2, 2024, the Government shall submit a letter to the Court providing, with relevant records:

- With regard to the intended loss amount:
  - An explanation as to whether Exhibit 4A solely concerns overshipping, and whether it includes any of the transactions listed in Exhibit 6.
  - A response to Defendant's argument that there was no promise to abide by the terms of the purchase orders. The Government should also provide examples of Defendant's confirmations of the purchase orders, and copies of the text messages listed in the Government's brief.
  - A response to Defendant's argument regarding the "intended loss" Application Note and his reliance on *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022).
- With regard to forfeiture:
  - An explanation as to why forfeiture should be based on Exhibit 5. The Government should also clarify whether Exhibit 5 takes into account (1) overshipped products compared to the products that Amazon actually ordered, and (2) substituted products.
  - A response to Defendant's argument that Amazon's calculation of the product substitution fraud—which appears to be attached as Exhibit 6 to the Government's supplement letter—is insufficient to prove loss. In asserting what the minimum forfeiture amount should be, the Government appears to rely on

a figure derived from Exhibit 6 (\$8,235,250). The Government should respond to Defendant's contention that Exhibit 6 lacks supporting documentation.

- A response to Defendant's argument that Amazon did not actually pay him all of the amounts listed in Exhibit 6. The Government should specify what substituted products Amazon paid for, as well as what substituted products Defendant invoiced.
- A response to Defendant's argument that forfeiture should be discounted by 20% for his costs in purchasing and shipping the items.
- With regard to restitution:
  - A response to Defendant's argument that any restitution associated with product substitution should be offset by Amazon's potential profits on the overshipped products. *See United States v. Gonzalez*, 647 F.3d 41, 65 (2d Cir. 2011) ("The purpose of restitution is to compensate victims for their losses.").
  - A response to Defendant's argument that he should only be held accountable for his conduct, and not that of his co-defendants.
  - A response to Defendant's argument that attorneys' fees are not recoverable.
- With regard to the allegedly counterfeit and gray market goods:
  - A response to Defendant's argument that he had no knowledge of the counterfeit and gray market goods, with supporting evidence.
  - A clarification of whether the Government is arguing that the value of the counterfeit and gray market goods should go toward the intended loss amount, forfeiture, and/or restitution.
  - A response to Defendant's argument that counterfeit and gray market goods are not part of the offense of conviction, and thus cannot be taken into account for restitution.

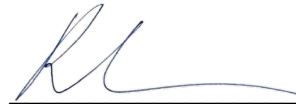
Defendant may submit a response to the arguments raised in the Government's letter no later than July 9, 2024. Defendant's letter to the Court should also provide, with relevant records:

- An explanation of how Defendant calculated the figure \$1,223,135.73, including what transactions the figure is based on.
- An explanation of how Defendant concluded that Amazon did not pay for at least \$2,487,356.22 of the substituted products listed in Exhibit 6, including what transactions the figure is based on.

- An explanation of why forfeiture should be discounted by 20%, with supporting documentation.

SO ORDERED.

Dated: June 18, 2024  
New York, New York

A handwritten signature in blue ink, appearing to read 'RA', is written above a horizontal line.

Ronnie Abrams  
United States District Judge